



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/169196

PRELIMINARY RECITALS

Pursuant to a petition filed October 02, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on November 19, 2015, at Waukesha, Wisconsin.

The issue for determination is whether Waukesha County Health and Human Services (the agency) correctly determined that the Petitioner was overpaid BadgerCare+ benefits for the period of March 2014 through September 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Jones, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On August 18, 2015, the agency sent the Petitioner a Medicaid/BadgerCare Overpayment Notice indicating on the front page that the Petitioner had been overpaid benefits in the amount of \$1650

for the period of March 2014 through September 2014. The second page, contained a typographical error and indicated the incorrect amount. The agency attached the BadgerCare+ budgets to the overpayment notices, but did not include an overpayment worksheet. (Exhibit 8; testimony of Petitioner)

3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on October 2, 2015. (Exhibit 1)

DISCUSSION

28.1 Overpayments

An “overpayment” occurs when BadgerCare Plus benefits are paid for someone who was not eligible for them or when BadgerCare Plus premium calculations are incorrect. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of [application](#) regarding any information that would affect eligibility.

Note: Overpayments can only be recovered if the member failed to report a change for which they were notified they were required to report.

BadgerCare+ Eligibility Handbook (BEH) §28.1

The Seventh Circuit Court of Appeals held that the demands of Procedural Due Process require that recipients of public assistance be given adequate notice of adverse action. *Dilda v. Quern*, 612 F. 2d 1055 (7th Cir. 1980). The Court of Appeals in *Dilda v. Quern*, found that a State Agency had violated the due process of rights of public assistance recipients, because the notice advising them of the reduction or cancellation of their benefits failed to provide the recipient with a detailed notice showing the breakdown of income and allowable deductions.

This holding is reflected in Wisconsin policy:

“Each client has the right to adequate and timely notice of adverse action.” *Income Maintenance Manual (IMM) §§ 3.2.1 and 3.2.2*

“Notify the member or the member’s representative of the period of ineligibility, the reason for his/her ineligibility, the amounts incorrectly paid, and request arrangement of repayment within a specified period of time.” *BEH §28.5*

In this case, the agency did not include an overpayment worksheet with the notice. Although the agency attached to the overpayment notice, the BadgerCare Plus Budget print outs in Exhibit 10, they are only the printouts for June, July, August and September 2014. The printouts for March through May were not included.

Petitioner’s income would have been calculated under non-MAGI rules, because his application filing date was before February 1, 2014. (See *BEH §16.1.2*) As such, attaching the BadgerCare+ Budget printout might have cured the defect in the overpayment notice for the months of June, July, August and September 2014, since the only real deduction from income allowed for most people, at that time, was for court ordered child support payments. See *BEH §16.3.1*

However, since the agency did not include any budget print outs for March through May 2014 and did not have an overpayment worksheet showing how Petitioner's income was calculated, it did not give the Petitioner adequate notice of the overpayment for those months. In addition, without an overpayment worksheet for March through May, there is no way for me to review the overpayment calculation for those months. So, the agency will have to remove the overpayment for March 2014 through May 2014.

With regard to the overpayment for June 2014 through September 2014, I have compared the employer verification of earnings form in Exhibit 3 with the budget printouts and can find no error in the income calculations. As such, it is found that the agency correctly determined that the Petitioner was overpaid benefits for those months.

Petitioner argued that he does not think it is fair to hold him liable for any part of the overpayment, because he wasn't aware of how to report the change and believes he did report the change via ACCESS in January 2014.

First, administrative law judges do not have the authority to make decisions based upon what a person thinks might be fair, but must instead make decisions based upon the law as it is written. "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985).

Second, the Petitioner testified that he knew he could report changes on-line using the ACCESS system. In addition, Petitioner was sent a notice in December 2013, that contained a phone number and fax number that could be used to "send proof or report changes".(Exhibit 2) It was located in an outlined / highlighted box in the upper right hand corner of the first page. As such, Petitioner's claim that he did not know how to report changes is without merit.

Third, there is no documentation in the record substantiating the Petitioner's claim that he used ACCESS to report his new employment. Exhibit 11 is a set of case comments that spans January 2014 and there is no indication there, that the Petitioner filed a change report via the ACCESS system.

At the hearing, the Petitioner was clearly confused about what he reported to whom, because he assumed that if he reported the employment to the [REDACTED] ([REDACTED]) to end his unemployment insurance benefits (UIB) that he must have reported it to the agency. However, one must log in to the [REDACTED] website to report changes affecting UIB claims. That is a separate system from ACCESS:

<https://access.wisconsin.gov/>

vs.

<https://dwd.wisconsin.gov/uiben/>

CONCLUSIONS OF LAW

1. The agency did not give the Petitioner proper notice of an overpayment of benefits for the period of March 2014 through May 2015.
2. The agency correctly determined that the Petitioner was overpaid BadgerCare+ benefits for the period of June 2014 through September 2014.

THEREFORE, it is

ORDERED

That the agency remove the alleged overpayment for the period of March 2014 through May 2014, from the notice it issued on August 18, 2015. The agency shall take all administrative steps to complete this task within ten days of this decision.

With regard to the overpayment of benefits for the period of June 2014 through September 2014, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of November, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 24, 2015.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability